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COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
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No. 47584-7

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STEVE J. DRAGICH

Appellant

v

THE DRAGICH LIVING TRUST

Respondent

ON APPEAL FROM THE SUPERIOR COURT FOR COWLITZ
COUNTY

The Honorable Court Commissioner David Nelson
Superior Court No. 13 2 00156 1

RESPONDENT'S OPENING BRIEF

CRAIG M. McREARY WSB 26367
Box 2340
1265 14th Avenue #120
Longview, WA 98632
360 578 2000

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I. RESPONSE TO ASSIGNMENTS OF ERROR

A. The appeal of Steve Dragich is not supported by an appropriate record in compliance with CR 11 and RAP 9.1, 9.2 and 18.9.

B. The trial court made no error. The trial court properly ordered that any requirement of accounting by the trust to Steve Dragich was met by the Trust.

C. The trial court did not err to the extent that any requested subpoenas were denied.

D. The trial court did not err by concluding that the real property deed was invalid or by ordering that such deed be destroyed.

E. The trial court did not err because the Trust did not cause loss to Steve Dragich or fail to follow its order instructions.

F. The Trust should be awarded attorney's fees on this appeal.

II. STATEMENT OF THE CASE

The Dragich Living Trust (the Trust) commenced this action by filing a Petition for Determination of Rights under RCW 11.96A in Cowlitz County Superior Court on January 28, 2013. (CP 1, 3). The Petition generally alleges that Steve Dragich wrongly and without authority took assets of the Trust. (CP 1, 3). The Petition requests Judgment against Steve Dragich along with a request for the sale of real estate and/or timber to equalize the distribution of trust assets. (CP 1).

A trial was conducted in this action on April 29, 2013 before Commissioner David A. Nelson. Commissioner Nelson issued a written decision on May 15, 2013. (CP 25). There is no evidence of a demand for an accounting or a request for a Subpoena prior to the April 29, 2013 trial in this matter. On September 20, 2013, Findings of Fact and Conclusions of Law and a Judgment and Order were entered in this action. (CP 37, 38). The trial court made multiple findings that Steve Dragich wrongfully took funds from the Trust

intentionally, willfully and with the intent to deprive Trust beneficiaries of the funds. (CP 37 at 2, 3, 4 and 6).

For purposes of the enforcement of the court's Judgment, the trial court entered an Order for Authority to evaluate assets on November 27, 2013. (CP 39, 43). After the valuation of assets occurred, the trial court entered an Order for Authority to sell assets to satisfy Judgment on February 6, 2014. (CP 45, 48, 49). The Order for Authority to sell assets to satisfy Judgment does require the Trust to provide Steve Dragich with an accounting for logging proceeds. (CP 49 at 3). When the Trust attempted to complete the logging of real property that was ultimately to be awarded to Steve Dragich under the Trust, Steve Dragich physically blocked access to the real property and timber claiming that the Trust did not own the real estate. (CP 62, 63, 64, 65, 66, 67, 68, 71, 72, 73, 74, 78, 79). A trial was conducted regarding the deed to real property and contempt allegations against Steve Dragich for blocking access to the real property in violation of the trial court's Order for Authority to sell assets to satisfy Judgment. The trial court found that Steve Dragich intentionally, wrongfully and maliciously recorded and altered a

copy of a Deed. (CP 78). The trial court also found that Steve Dragich intentionally, knowingly, willfully and maliciously obstructed the ingress and egress of the loggers, etc. in violation of the court's Order for Authority to sell assets to satisfy Judgment. (CP 78). The trial court entered an Order of Contempt and Restraining Order and an Order regarding the invalid Deed. (CP 79, 80).

On November 12, 2014 the trial court entered an Order for Authority to satisfy Judgment which set forth a series of deadlines for an accounting and objections thereto. (CP 94, 95, 96, 99, 106). Steve Dragich was given until December 22, 2014 to object to the accounting of the Trust. (CP 99). No objection to the accounting of the Trust was timely made. On November 19, 2014 the trial court entered a Judgment and Order for costs and attorney's fees. (CP 100).

On November 26, 2014, Steve Dragich filed a Motion for Subpoena in a Civil Case. (CP 103). This Motion was not properly brought before the court. Then, on March 26, 2015, Steve Dragich submitted, without notice to the Trust, three Subpoenas Duces

Tecum. (CP 116, 117 and 118). It appears that Judge Stephen M. Warning of Cowlitz County Superior Court signed the Subpoenas and then denied them under the rationale that the court rule does not provide for production to private parties. (CP 116, 117 and 118). Again, the Trust was given no notice regarding the presentation or disposition of the Subpoenas.

On March 27, 2015, Steve Dragich filed Motions and Objections to accounting, seeking sanctions, production of documents and additional accountings. (CP 123). These Motions were never properly brought before the court. The accountings and any other documentation required by the court were served on Steve Dragich. (CP 106, 113, 124 and 127).

On April 3, 2015, the trial court entered an Order on Hearing February 26, 2015. (CP 125). The court ordered that Steve Dragich had received the appropriate amount of excess proceeds from the logging ordered by the court. (CP 125). The trial court also concluded that the accounting of such logging proceeds was properly served on Steve Dragich without objection resulting in the adoption and confirmation of such accounting is true and correct. (CP 125).

The Trust was ordered to complete an accounting for the finalization of the Trust with any objections to such accounting to be made by March 27, 2015 and to be heard by the court on April 3, 2015. (CP 125). The court heard Steve Dragich's objections and entered its order.

Also on April 3, 2015, the trial court entered an Order Finalizing Trust. (CP 108, 126). The trial court authorized the acts necessary to finalize the Trust, including delivery of distributive shares, Deeds for real estate and approval of the final accounting. (CP 126).

This appeal was filed on May 5, 2015 by Steve Dragich. (CP 130).

III. ARGUMENT

This action was brought under RCW 11.96A (TEDRA) which provides that an interested party may seek appellate review in the same manner as in civil actions. RCW 11.96A.200. TEDRA gives the trial court “full and ample power and authority” to “administer and settle” all estate and Trust matters. RCW 11.96A.020(1). If TEDRA does not authorize a trial court action, “the court nevertheless has full power and authority to proceed with such administration and settlement in any manner and way that to the court seems right and proper.” RCW 11.96A.020(2). The present case should be reviewed with the broad authority of the trial court in mind.

Trial court decisions regarding trust and estate matters are subject to de novo review but deference is given to a trial court’s factual findings. See In re: Riddell Testamentary Trust, 138 Wn.App. 485, 491 – 492 (2007); In re: Estate of Black, 116 Wn.App. 476, 483 (2003). The reviewing court should begin with a presumption in favor of the trial court’s findings and the appellant has the burden of showing that a finding of fact is not supported by

substantial evidence. In Green v Normandy Park Riviera Section Comm. Club, Inc., 137 Wn.App. 665, 689 (2007). Unchallenged findings are verities on appeal. Cowiche Canyon Conservancy v Bosley, 118 Wn.2d 801, 808 (1992). In this case, there are two sets of findings of fact that are unchallenged. (CP 37, 78).

A. The appeal of Steve Dragich is not supported by an appropriate record in compliance with CR 11 and RAP 9.1, 9.2 and 18.9. Steve Dragich has requested review of trial court orders that were based upon trials and hearings with oral remarks. Steve Dragich has failed to perfect the record on appeal sufficiently to support the issues he presents on appeal. It is the appellant's burden to perfect the record on appeal. RAP 9.2 (b). When an appellant has failed to perfect the record on appeal, the court may decline to reach the merits of an issue because it does not have all the evidence relevant to the issue before it. Rhinevault v Rhinevault, 91 Wn.App. 688, 692 (1998). This court should not reach the merits of this appeal because the record has not been perfected and there is insufficient evidence to support the appeal.

B. The trial court made no error. The trial court properly ordered that the requirement of accounting by the Trust to Steve Dragich was met by the Trust. The brief of Steve Dragich provides no applicable authority regarding this issue. Steve Dragich cites RCW 11.106.020 as controlling. RCW 11.106.020 requires annual accountings to income beneficiaries of a Trust. Steve Dragich was not and is not an income beneficiary of the Trust. The statute does not apply. This interpretation of the statute was supported by Division II in Cook v Brateng, 158 Wn.App. 777, 787 (2010). In the present case, Steve Dragich is not an income beneficiary, has not filed a Petition and has otherwise received Trust accountings throughout this litigation. The brief of Steve Dragich also cites RCW 11.106.040 to suggest that an accounting was required, but Steve Dragich did not file a Petition as required by the statute.

C. The trial court did not err to the extent that any requested subpoenas were denied. Washington Court Rule 45(d) requires certain text to be included in Subpoenas. The Subpoenas presented by Steve Dragich did not include the language required by the rule. Additionally, the Subpoenas presented by Steve Dragich

demand the production of documents to Steve Dragich. The demand in the Subpoena is not made for the purpose of inspection or copying as contemplated by CR 45(a)(1)(C), CR 45(a)(3) and CR 34.

Notwithstanding these procedural failures under the civil rules, Steve Dragich was not entitled to conduct discovery through the Subpoenas that he requested. The court had total discretion in denying the subpoenas. RCW 11.96A.100 (10).

D. The trial court did not err by concluding that the real property deed was invalid or by ordering that such deed be destroyed. Unchallenged Findings of Fact support the trial court's conclusion in this regard. No authority is provided in the brief of Steve Dragich to support this argument.

It cannot be disputed that copies, not the original deeds for land and timber, were delivered to Steve Dragich's attorney for review. (CP 78). The Trust provided proper legal authority to support the order of the court. (CP 73). Copies of Deeds are not Deeds under RCW 64.04.020. A copy of a Deed is not entitled to be recorded to convey title. Rehm v Reilly, 161 Wn. 418 (1931); 18

WAPRAC, sec. 14.7. Since Steve Dragich recorded altered copies of the deeds, the recording was not valid to convey title.

Delivery of a Deed is fundamental to conveyance of real property. RCW 64.04.030 sets forth the form and effect of a Warranty Deed and makes reference to the “making and delivering of such deed.” A Deed must be delivered to effectively pass title. Clearwater v Skyline Constr. Co., 67 Wn.App. 305, 318 (1992). Delivery of a Deed is wholly dependent upon the intention of the grantor. Juel v Dahl, 51 Wn.2d 435 (1957). Delivery of a Deed requires the grantor’s intent that the Deed should take effect. Rayborn v Hayton, 34 Wn.2d 105 (1949). The trial court Findings of Fact are clear that the trust and its attorney did not intend delivery of Deeds to Steve Dragich when the copies were provided to his attorney. (CP 78). Since no delivery of the Deeds was made, no conveyance took place and the trial courts invalidation of the recording of copies was proper. The destruction of the old original Deeds is irrelevant and without impact as new Deeds were created, recorded and delivered to Steve Dragich. (CP 127).

E. The trial court did not err because the Trust did not cause loss to Steve Dragich or fail to follow its order instructions. This assignment of error is unclear. Steve Dragich does not provide sufficient information or analysis in his brief to properly understand what he is challenging on appeal. It appears that he may be complaining about the fact that there were excess proceeds from the sale of timber. Receipt of the excess proceeds was acknowledged by Steve Dragich in open court and confirmed by order of the court. There is no error nor harm to Steve Dragich when he has received the full value of an asset after payment of judgments.

If Steve Dragich is arguing that the Trust logged more timber than was necessary to satisfy Judgments, this would have been an issue to take up with the trial court. The trial court order specifically indicates that the Trust “shall only log so much of the property from Steve Joe Dragich’s share as may be reasonably necessary to satisfy the Judgment and amounts ordered herein, plus interest, plus anticipated future accruals.” (CP 49). The trial court did not exercise a lack of care in this regard as the Trust was ordered to first evaluate the proper amount of timber to be cut to satisfy Judgments.

(CP 43). Substantial information was presented to the court in support of the method and amount of timber cutting that occurred. (CP 45, 48). Ultimately, the excess proceeds from the sale of timber were paid to and accepted by Steve Dragich.

F. The Trust should be awarded attorney's fees on this appeal. The Trust seeks attorney's fees based on RCW 11.96A.150(1), RAP 18.1 and RAP 18.9. Steve Dragich did not properly perfect the record for this appeal by failing to obtain a verbatim report of proceedings. This results in a lack of support for the arguments made by Steve Dragich that challenge the trial court's orders that are based upon Findings of Fact. An appeal is frivolous if there are no debatable issues on which reasonable minds can differ and the appeal is totally devoid of merit such that there is no reasonable possibility of reversal. Wright v Dave Johnson Ins., Inc., 270 5P 3d 339, 356 (2012). The arguments advanced by Steve Dragich in this appeal do not present debatable issues on which reasonable minds can differ as the rulings of the trial court were discretionary and based upon reasonable factual conclusions.

IV. CONCLUSION

Based on the foregoing and authorities, the Trust respectfully urges this court to affirm the trial court rulings, dismiss this appeal and/or award attorney's fees to the Trust.

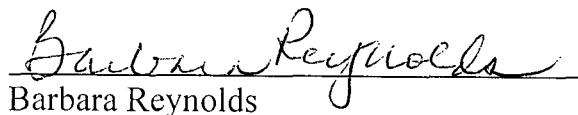
Dated January 11, 2016.



CRAIG M. McREARY WSB 26367
Attorney for the Dragich Living Trust
Box 2340
1265 14th Avenue #120
Longview, WA 98632

CERTIFICATE OF SERVICE

I, Barbara Reynolds, certify that on the 11th day of January, 2016, served a copy of the Respondent's Opening Brief by first class mail, postage prepaid, on Steve Joe Dragich, 954 Fall Creek Road, Longview, WA 98632.


Barbara Reynolds

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